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AUTHOR Reitman, Alan
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ABSTRACT

The author discusses the various aspects of the legal struggle for abolishing corporal punishment in schools. A review of several recent cases of corporal punishment brought to the attention of the Supreme Court shows that the court has so far upheld the right of schools to practice physical punishment, within reasonable limits, as a disciplinary measure. The court rulings were based on two major principles: a) the state educational boards have a certain degree of autonomy in their educational policies and; b) the constitutional rights that apply to adults do not apply to children. The author discusses many legal cases where the Court ruled the use of corporal punishment in institutions for delinquent children and in prisons was illegal, and argues that this decision is equally applicable to public schools. In several recent cases the Supreme Court has ruled that before punishment is inflicted on students, principles and teachers should give students the right to defend themselves verbally, and teachers should have the permission of parents before physically punishing their children. These decisions, the author considers, are encouraging steps in the legal struggle to abolish corporal punishment once and for all. (SE)

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"The Law and Corporal Punishment: Recent Legal Decisions on Corporal Punishment in Schools."

A paper presented at the September 1, 1975 meeting of the American Psychological Association

Alan Reitman, Associate Executive Director,
American Civil Liberties Union.

* * *

Legal challenges to the institution of corporal punishment in the schools, and it is definitely an institution both in law and common practice, turn our thoughts immediately to the United States Supreme Court. That court declares what is finally "the law of the land," -- at least for the moment.

Yet the Supreme Court has not ruled on the constitutionality of corporal punishment in schools despite the plethora of cases that have been initiated in the last five years. Indeed in one case, Ware v. Estes,[1] the court declined to review the decision of lower courts upholding the use of corporal punishment in Dallas schools. This is not strange for courts, including the Supreme Court, are reluctant to deliver constitutional rulings on educational matters, especially on issues affecting elementary and secondary education. The courts are very much aware of the separation of powers and do not want to impinge on the authority of local government to operate their educational systems.

When one considers that between the Court's 1941 decision

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in West Virginia v. Barnette[2] that school children whose parents were members of Jehovah's Witnesses need not salute the flag in school and its 1969 Tinker[3] decision holding unconstitutional the expulsion of two Des Moines school children for wearing black arm bans to protest the killing in Vietnam, the Supreme Court decided no major case defining the rights of children in education, the judiciary's sensitivity to local governmental authority is abundantly clear.

This sensitivity was expressed by the Supreme Court in its 1968 Epperson[4] decision which held that the Arkansas law prohibiting the teaching of Darwinian evolution was a violation of the principle of the separation of church and state. The Court said: "judicial interposition in the operation of the public school system of the nation raises problems requiring care and restraint...By and large, public education in our nation is committed to the control of state and local authorities. Courts do not and cannot intervene in the resolution of conflicts which arise in the daily operation of school systems and which do not directly and sharply implicate basic constitutional values." A simplified, less legalese version appeared in the 1971 Sims v. New Mexico[5] decision of a U.S. Federal District Court judge upholding a local school district's use of corporal punishment: "This Court will not act as a super school board to second guess the defendants."

If the separation of powers argument was one spike which held down successful challenges to corporal punishment, then the

other was the long-standing view of children as a special class, one which could not be treated under the same blanket of constitutional protection as adults. The concept of shielding children from the harsh reality of courtroom conflict has been a staple of our legal system.

In the words of the Supreme Court's 1968 Ginsberg v. New York[6] decision upholding a state statute making criminal the sale of nude pictures to children even though the pictures are not regarded as obscene for adults: "Even where there is an invasion of protected freedoms, 'the power of the state to control the conduct of children reaches beyond the scope of its authority over adults'..." Justice Potter Stewart, in a concurring opinion in that case, defined this position more fully: "I think a state may permissibly determine that, at least in some precisely delineated areas, a child -- like some in a captive audience -- is not possessed of that full capacity for individual choice which is the presupposition of First Amendment guarantees. It is only upon such a premise, I should suppose, that a state may deprive children of other rights -- the right to marry, for example, or the right to vote -- deprivations that would be constitutionally intolerable for adults."

One might expect from this summary that the judicial attitude is immutable. Not so. The law does change and judges with

it. The tides of history and public attitudes do enter into the Supreme Court's thinking. As Finley Peter Dunne's humorous character, Mr. Dooley, commented in 1900: "No matter whether th' constitution follows the flag or not, th' supreme court follows the 'illiction returns."

The era of the 60's was one of strong social protest in which entire segments of the population, previously seen as groups to whom the Bill of Rights did not apply, emerged to demand their rights. Black people, homosexuals, military personnel, young people, prisoners, the poor all came forward to demand the mantle of constitutional protection. And the Supreme Court, under the courageous leadership of Earl Warren, responded with decisions that began to apply these protections to disadvantaged classes of people.

The power of this social revolution, which the Court's decisions fostered, swept minors and students into its vortex. In 1967 the Supreme Court said "In Re Gault[7] that minor defendants involved in a juvenile proceeding were entitled to certain procedural safeguards: "...whatever may be their precise impact, neither the Fourteenth Amendment nor the Bill of Rights is for adults alone." This attitude was emphatically reaffirmed with respect to school children in the Tinker v. Des Moines Independent Community School District case:[8] "Students in school as well as out of school are

'persons' under our Constitution. They are possessed of fundamental rights which the states must respect, just as they themselves must respect their obligations to the state."

The Supreme Court's view of children as a group within society that deserved constitutional protection was not absolute. In the 1973 Rodriquez[9] case which raised the problem of equal financial support for all school districts, the Court held that the state is not obligated as a matter of fundamental right to provide education. This somewhat narrowed the ground on which the rights of children in other kinds of school cases could be pressed.

Nevertheless, it was against a background of litigative activism and a changing Supreme Court attitude toward children, that the legal drive for abolition of corporal punishment in schools was undertaken. Lawyers began a systematic attack against the idea of physical punishment in schools as a disciplinary measure, reminded by the oft-quoted Botsford Principle in the 1891 Supreme Court case of Union Pacific Railroad Co. vs. Bostford:[10] "no right is held more sacred, or is more carefully guarded by the common law, than the right of every individual to the possession and control of his own person free from all restraints of interference of others, unless by clear and unquestionable authority of law."

The motivating force for the legal assault on corporal punishment in schools is explained in this 1975 statement by the Community Advocate Unit of the Pennsylvania Attorney General's

office:[11] "Lawyers are concerned about the legal viability of the use of corporal punishment in schools, including its questionable constitutionality and of the anomaly that children in schools are the last class of persons who are allowed to be beaten in a social context...

"The recentness of the Supreme Court's affirmation that children are protected by the Constitution reflects the curiousness of the position of children in Anglo-American legal systems. Until recently the need for solicitious care and nurturing of the young has improperly provided the rationale for corporally punishing children in schools. With the recognition of constitutional protections from invasion of physical integrity and security, the lack of recognition of such protection from corporal punishment in schools is an anomaly. The Tinker and Goult decisions make clear that children are 'people' under the Constitution. As people, school children should be immune from an unconstitutional intrusion into that 'sacred' zone, the student's body. Although to date, none of the cases challenging the constitutionality of corporal punishment have been unqualifiedly successful, the recognition of a constitutional protection from corporal punishment of school children is an idea whose time has come."

This assertion of an "idea whose time has come" did not automatically assure success in this legal campaign. Educational authorities argued vigorously, and still do, that elimination of

corporal punishment will rob principals and teachers of a tool necessary to enforce discipline and curb unruly behavior -- to maintain order (A curious argument in view of the accepted psychological fact that force and coercion only breeds anger that breaks out in unruly behavior.) And so far the courts have generally backed this claim.

In the 1971 Sims[12] case the Federal District Court in New Mexico said: "The regulation here questioned does not go beyond that which is sometimes reasonably necessary or required and is reasonably calculated to serve the public interest by promoting decorum in the public schools through legitimate means." And as a three-judge federal court opined in the Baker[13] case now being pressed before the Supreme Court challenging North Carolina's corporal punishment statute: "There can be no doubt about the state's legitimate and substantial interest in maintaining order and discipline in the public schools...It should be clear beyond peradventure, indeed self-evident, that to fulfill its assumed duty of providing an education to all who want it, a state must maintain order within its schools, as the Supreme Court has recognized on several occasions... So

so long as the force used is reasonable* -- and that is all that the statute here allows -- school officials are free to employ corporal punishment for disciplinary purposes until in the exercise of their own professional judgment, or in response to concerted pressure from opposing parents, they decide that its harm outweighs its utility."

But lawyers and organizations, like the American Civil Liberties Union, remain undaunted, despite the determination of school officials to retain their custom of physical punishment and the courts' over-all approval of this practice. In the time remaining I would like to present some of the main legal arguments now being pressed, the courts' reactions, engage in a bit of crystal-ball gazing as to legal directions and conclude with some suggestions for practioneers like yourself.

The Eighth Amendment to the United States Constitution protects the individual against the state using cruel and unusual

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*Editorial Note: The reference to "reasonable" force appears in several other legal decisions. This keys the issue not on the question of removing corporal punishment as a violation of a child's basic right, but on the degree of coercion utilized. Thus there is created a "floating" standard depending on the judgment of individual judges rather than a single defined standard that could be applied nationally - A.R.

punishment. The employment of physical force in schools, especially with the weight of educational and psychological opinion so firmly opposed, has made the Eighth Amendment argument an attractive one.

The corporal punishment of soldiers, sailors, domestic servants and prisoners has already been determined to violate current moral standards. Specifically, in Jackson v. Bishop,[14] the U.S. Court of Appeals for the Eighth Circuit found in 1968 that the whipping of prisoners with a strap in an Arkansas penitentiary "offends contemporary concepts of human decency and precepts of civilization which we profess to possess." In 1974 the Seventh Circuit upheld the finding of a lower court in Nelson v. Heyne[15] that the use of corporal punishment and the method of administering tranquilizing drugs by defendant officers of the Indiana Boys School for young offenders was cruel and unusual punishment. The Court found that the paddling of the boys violated "The standards of decency in a maturing society, in that the punishment was disproprotionate to the offense and offended broad and idealistic concepts of dignity, civilized standards, humanity and decency."

These are convincing arguments which would appear to apply to educational institutions. But with one exception based on the excessive use of punishment, the courts have refused to accept the Eighth Amendment connection between prisoners and juvenile offenders and school children.

In the 1971 Ware v. Estes[16] decision, a Federal District Court held that the policy of corporal punishment as applied in Dallas (recommended by a committee and approved by a parent before a teacher utilizes it) was not unrelated to the "competency of the state in determining its educational policy" and was not a violation of the Eighth Amendment. The Court made special note of the fact, to which other courts have alluded, that if the punishment was unreasonable or excessive, "it is no longer lawful and the perpetrator of it may be criminally and civilly liable. The law and policy do not sanction child abuse."

The New Mexico Sims[17] case rejected the cruel and unusual punishment argument on similar grounds, pointing out that the punishment of the students consisted of three blows from a paddle, only slight physical harm, and was meted out openly in the hall of the school building. This finding was re-iterated in the 1972 Glaser[18] case, in which a Pennsylvania Federal District Court judge said neither the force used or the sanction applied were excessive or indiscriminate. Other judges have relied on technical interpretations of the Eighth Amendment to reject the claim of cruel and unusual punishment. A Vermont Federal District Court judge, ruling in the 1973 Gonyaw[19] case, said that the Eighth Amendment was written to apply to penalties imposed for criminal behavior, and since the children were not punished for a criminal offense the Amendment could not be properly invoked.

Although these decisions do not accept the claim that corporal punishment is per se a violation of the Eighth Amendment, one major federal court has ruled that the manner in which the punishment is applied may infringe this constitutional guarantee. In 1974 the U.S. Court of Appeals for the Fifth Circuit produced this important breakthrough in the Ingraham v. Wright[20] decision, holding that where the punishment causes serious physical and psychological injuries, is systematically administered, and is inflicted without the students being given an opportunity to explain the circumstances which led to the punishment, the Eighth Amendment is violated. The case concerned Florida's Dade County School system, the sixth largest in the nation, where charges of indiscriminate use of corporal punishment by teachers and without consulting their principals were made.

The appeals court said the use of corporal punishment was a proper disciplinary measure in schools but added: "whether punishment is cruel and unusual depends upon the circumstances surrounding the particular punishment. In this case children aged 12 through 15 were punished for alleged misconduct that did not involve physical harm to any other individual or damaged property. The system of punishment utilized resulted in a number of releatively serious injuries and thus clearly involved a significant risk of physical damage to the child. Taking into consideration the age of the children, the nature of the misconduct, the risk of damage, this court must conclude that the system of punishment at the junior

high school was 'excessive' in a constitutional sense."

The report of the Community Advocate Unit of the Pennsylvania's Attorney General, alluded to above, concludes its section on the Eighth Amendment aspect by stating: "If corporal punishment is to be prohibited as cruel and unusual punishment in prisons and juvenile institutions, how is it constitutionally permissible in public schools. If delinquent students are protected by the Eighth Amendment then so must students in public schools. The evolving standards of decency that mark the progress of a maturing society militate against the continued use of corporal punishment found to be ineffective as a rehabilitiative tool, susceptible of abuse and used excessively when lesser correction could be used, and contrary to current sociological thought. A common sense approach to the question must be if you cannot beat prisoners or delinquent children how can you beat children in public schools?"

Yet our courts are loath to apply this interpretation, relying instead on the right of local school officials to determine under state statutes their own educational policies, including the use of corporal punishment.

If courts are reluctant to accept a sweeping constitutional ban on corporal punishment, they seem willing to impose certain restrictions on its application. In this direction lies hope for curbing the practice. These restrictions relate to the question of parental, not children's, rights.

That parents have the right to raise their children as they see fit, including their education, was asserted by the Supreme Court as early as the 1920's and reaffirmed as late as the 1970's. In Meyer v. Nebraska[21] (1923) deciding that a state is without the right to compel the instruction of school children in the English language only, the court said "without a doubt [liberty in the Fourteenth Amendment sense] denotes not merely freedom from bodily restraint but also the right of the individual to... establish a home and bring up children..." This was followed by Pierce v. Society of Sisters[22] (1925) in which the court struck down a compulsory school attendance law which required all children to be educated in state-maintained schools. Upholding the right of private schools to exist, the court said that parents have the liberty "to direct the upbringing and education of children under their control... rights guaranteed by the constitution may not be abridged by legislation which has no reasonable relation to some purpose within the competency of the state...The child is not the mere creature of the state; those who nurture him and direct his destiny, have the right, coupled with the high duty, to recognize and prepare him for additional obligations."

In the Wisconsin v. Yoder[23] (1972) case validating the Amish's right to educate children as they wished, the Court said: "... a state's interest in universal education, however highly we rank it, is not totally free from a balancing process when it impinges on other fundamental rights and interests, such as those

protected by...the traditional interest of parents with respect to the religious upbringing of their children so long as they, in the words of Pierce,... 'prepare [them] for additional obligations!'

These decisions are the framework in which attorneys operate to maintain the right of parental control. The fact that parents turn over their children to school authorities in loco parentis should not mean that whatever the school wishes to do with the children is a proper exercise of the parental function. The early definition of in loco parentis meant that the school was to stand in place of the parent with respect to the parent's total responsibilities to the child, not merely the disciplinary role. The present-day definition, in the form of corporal punishment, is in loco parentis for purposes of controlling the child.

Acknowledging that parental interests must be balanced against the state's interests, federal courts have enunicated the view that corporal punishment in schools must be exercised only with parental consent. The court in Ware,[24] the earliest recent decision, noted that such consent was part of the Dallas School Board policy. The most significant advance in limiting corporal punishment, however, came in the Glaser[25] case where the federal court ruled that the discipline could be exercised only if the parent is willing to grant the school such authority. This was followed by a similar ruling in the 1974 Mahanes[26] case, contesting Virginia's corporal punishment law.

An extension of this argument is being made this month in a jurisdictional statement asking the United States Supreme Court
27
to hear North Carolina's Baker case. Attorneys for Virginia Baker, who as a matter of principle, had requested on several occasions the principal and teachers in her son, Russell's, school, not to administer corporal punishment, have stated the issue this way: "Does the constitutional concept of familial privacy bar school officials from whipping school children over parental objections?"

Relying primarily on the Meyers and Pierce decisions, Mrs. Baker's attorneys claim that the right of "familial privacy" is a preferred position in the constellation of constitutional rights and the burden is on the state to establish a compelling need to override this inherent right. They answer the educators' argument of in loco parentis by stating that the assumption of parental supremacy was not strained by this relationship so long as education was voluntary, not compulsory, and corporal punishment was accepted as an appropriate means of disciplining a child -- conditions that do not exist today. Of particular interest to psychologists is this comment in the judisdictional statements, drawing on the testimony of clinical psychologist John Edwards that the whipping of the child against his or her parent's will carries the potential of more serious psychological damage to the child than when the child is physically disciplined with parental consent. Psychologist Edward testified:

"I think that in any situation where the adults who have primary responsibility for the care of a youngster strongly disagree, you're going to have a situation which causes the children to become highly anxious and to be somewhat unsure of the position that they may be in; so in the situation where the school and the parents are disagreeing, the child is really very much caught in a bind. I think the situation offers him as opportunity to certainly get into all kinds of problems -- not only with his feelings, but in terms of his behaviors -- trying to find out, really, who has primary responsibility for him so he knows where the limits are."

Other legal theories are being propounded in the effort to have courts declare the practice of corporal punishment illegal but so far with no success: (1) Building on the Supreme Court's declaration of a right of privacy in the Griswold[28] case voiding Connecticut's law barring dissemination of birth control information, the argument goes that giving schools the authority to whip children is not a compelling state interest and therefore invades their constitutionally - protected zone of privacy. This position is strengthened by the Supreme Court's abortion decisions involving control over one's own body -- the issue of corporal punishment focusing on the sanctity of one's bodily integrity, especially as there is no effect on another person.

(2) Related to the theory of physical integrity is an interpretation of the Fourth Amendment's prohibition against un-

unreasonable searches and seizures. The legal argument is shored up by two recent Supreme Court decisions[29,30] involving consensual blood alcohol tests and the frisking of a suspect's overcoat by a police officer. In both cases the high court dwelt heavily on the application of the Fourth Amendment to an individual's physical security.

(3) Arguments that corporal punishment is a denial of equal protection of the law have been rejected on grounds that the cases show no discriminatory application, and that school board regulations meet the Fourteenth Amendment requirement of "reasonableness." Similarly, the position that corporal punishment is a violation of First Amendment rights because the vague and overbroad language of statutes produces a chilling effect on the exercise of free speech in the classroom has been given short shrift.[31]

A new boost to the legal campaign against corporal punishment in schools was given this year by a significant due process Supreme Court decision in a school case unrelated to corporal punishment. The idea that before the state punishes a citizen the individual must be informed of the charges against him/her so that there can be a chance to respond and prove innocence is the rock on which our idea of due process of law is built. The early corporal punishment decisions, such as Sims[32] and Gonyaw,[33] held that no such requirement was necessary in these kinds of school disciplinary situations. The decision of the educational authority, especially as only moderate force was applied, did not ~~rise to~~ raise the issue to the level of a criminal

proceeding requiring the full panoply of constitutional guarantees.

But since January 1975 a new gloss has been placed on the right of due process in school proceedings which holds high hopes for its application to corporal punishment (already it has been cited by the three-judge court in the North Carolinia Baker case.) In the Goss[34] case the Supreme Court upheld the finding of a lower court that Ohio public school students who had been suspended from school for misconduct for up to 10 days, without a hearing, were denied due process under the Fourteenth Amendment. In a close 5-4 decision the high court held: (1) that since Ohio had chosen to provide the right to an education to children, that right could not be withdrawn on charges of misconduct, without providing fair procedures to determine if the misconduct occurred; (2) since the misconduct charges, if sustained, could certainly damage a student's later employment and educational opportunities, the state could not unilaterally and without process determine whether the misconduct had occurred -- this collides with the due process clause's prohibition against arbitrary deprivation of liberty; (3) a 10-day school suspension was not de minimus in disregard of the due process clause; (4) due process requires in such cases an oral or written notice of the charges to the student, and if the charges are denied, an explanation of the evidence that authorities have and an opportunity to present a contrary version. The five-justice majority stopped

short of construing the due process clause as requiring hearings in short suspension cases, the opportunity to secure counsel, confront and cross-examine witnesses or call witnesses to verify the student's version of the incident.

On the other hand, as Justice White wrote for the majority: "...requiring effective notice and informal hearing permitting the student to give his version of the events will provide a meaningful hedge against erroneous action. At least the disciplinarian will be alerted to the existence of disputes about facts and arguments about cause and effect. He may then determine himself to summon the accuser, permit cross-examination and allow the student to present his own witnesses. In more difficult cases, he may permit counsel. In any event, his discretion will be more informed and we think the risk of error substantially reduced.

"Requiring that there be at least an informal give-and-take between student and disciplinarian, preferably prior to the suspension, will add little to the factfinding function where the disciplinarian has himself witnessed the conduct forming the basis for the charge. But things are not always as they seem to be, and the student will at least have the opportunity to characterize his conduct and put it in what he deems the proper context."

The four-judge minority echoed the refrain of non-judicial intervention in the operations of public schools and the need to treat children separately from adults: "The court holds for the first

time that the federal courts, rather than educational officials and state legislatures, have the authority to determine the rules applicable to classroom discipline of children and teenagers in the public schools...

"The court ignores the experience of mankind, as well as the long history of our law, recognizing that there are differences which must be accommodated in determing the rights and duties of children as compared with adults."

Underscoring this approach, the minority opinion speaks of the state's need to maintain an "orderly school system" and to inculcate an understanding of the necessity for rules and obedience. "This understanding is no less important than learning to read and write. One who does not comprehend the meaning and necessity of discipline is handicapped not merely in his education but throughout his subsequent life. In an age when the home and church play a diminishing role in shaping the character and value judgments of the young, a heavier responsibility falls upon the schools. When an immature student merits censure for his conduct, he is rendered a disservice if appropriate sanctions are not applied or if procedures for their application are so formalized as to invite a challenge to the teacher's authority - an invitation which rebellious or even merely spirited teenagers are likely to accept. The lesson of discipline is not merely a matter of the student's self-interest

in the shaping of his own character and personality; it provides an early understanding of the relevance to the social compact of respect for the rights of others. The classroom is the laboratory in which this lesson of life is best learned."

From there the minority argued that the due process requirements imposed by the majority mandates an adversary process which interferes with the teacher-student relationship. "In mandating due process procedures the Court misapprehends the reality of the normal teacher-pupil relationship. There is an ongoing relationship, one in which the teacher must occupy many roles -- educator, adviser, friend and, at times, parent-substitute.* It is rarely adversary in nature except with respect to the chronically disruptive or insubordinate pupil whom the teacher must be free to discipline without frustrating formalities... We have relied for generations upon the experience, good faith and dedication of those who staff our public schools, and the nonadversary means of airing grievances that always have been available to pupils and their parents. One would have

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*The role of the teacher in our society historically has been an honored and respected one, rooted in the experience of decades that has left for most of us warm memories of our teachers, especially those of the formative years of primary and secondary education.

thought before today's opinion that this informal method of resolving difference was more compatible with the interests of [illegible] concerned than resort to any constitutionalized procedure, however blandly it may be defined by the Court."

What can one deduce from this maze of legal rulings and opinions? Is there any clear legal course which those who seek to abolish corporal punishment in schools can follow, as a guide "to the promised land." Speculation on Supreme Court directions is always a risky occupation. The Court's composition may alter; changing public attitudes may re-inforce or shift judicial thinking; and no one can always predict accurately what an individual Supreme Court justice may do in a particular case.

However, despite these caveats, there are certain trends that I am willing to offer you, prefaced by a note of encouragement: It was not too many years ago that lawyers who argued that the length of school kids' hair was a matter of personal taste were regarded as frivolous if not worse. Today, while the Supreme Court has not ruled affirmatively on this question, more and more lower courts are declaring restrictions on long hair as outside the province of school officials.

1. Until such time as professional, expert opinion on the harm created by corporal punishment matches public indignation over such behavior, the Supreme Court will steer clear of ruling that corporal punishment per se must be abolished. Particular excesses, such as in the Ingraham case, will be condemned.

2. Definite restrictions will be imposed on school authorities in their use of corporal punishment. As outlined above, these will fall into two categories: full parental consent and some degree of due process hearings before the punishment is delivered. (as psychologists you may debate whether a due process hearing before punishment delays the sanction and thus increases the child's anxiety, whereas immediate punishment is more positive by making the sanction more real and permitting the child to move on to other behavior!)

3. A slight hedge on one aspect. We are just beginning to define the extent of the right of privacy as a constitutional guarantee. There is a rising interest in this newly-declared right and as the parameters develop the issue of body security -- including corporal punishment -- may be incorporated within the contours of privacy.

So, where does this leave people in your profession, who are commited to the eradication of corporal punishment in schools? I suggest you are in the position of working just as hard as you can, within your professional context, to support the fight for abolition. The battle is being waged now both in educational and public circles. What is involved is a struggle over values, in how we perceive children and the educational process, in what we can do to humanize the institution of education and make democratic procedures real and therefore meaningful. When school children

realize that their own rights of privacy and due process are being protected, and measures other than physical force can be utilized to deal with behavior situations, then their respect for democratic procedures, including the rights of others, will grow.

Given the present public mood for stiffer law and order postures and an end to "do-goodism" the liberalizing of disciplinary methods in schools is a difficult assignment. While the law, in certain ways, may help this campaign, it will not be the determining factor. What is needed, as a companion to the law, is an on-going educational effort to persuade the community that the rod and the paddle are anathema to a civilized society. This challenge, this choice, is yours.

FOOTNOTES

1. Ware v. Estes F. Supp 657 (N.D. Texas 1971)

2. West Virginia v. Barnette 319 U.S. 624 (1973)

3. Tinker v. Des Moines Independent Community School District 393 U.S. 503 (1969)

4. Epperson v. Arkansas 393 U.S. 97 (1968)

5. Sims v. Board of Education, Independent School District No.22 329 F. Supp 678 (N.M. 1971)

6. Ginsberg v. New York 390 U.S. 629 (1968)

7. In Re Gault 387 U.S. I (1967)

8. Supra

9. San Antonio Independent School District v. Rodriguez 411 U.S. 1(1973)

10. Union Pacific Railroad Co. vs. Botsford 141 U.S. 250 (1891)

11. "Corporal Punishment on Something you can Do To Students But Not to Soldiers, Sailors, Prisoners, or Servants," April 30, 1975

12. Supra

13. Baker v. Owen, No. C-74-46-G(M.D.N.C. April 23, 1975)

14. Jackson v. Bishop 404 F. Supp 571 (8th Circuit 1968)

15. Nelson v. Heyne 491 F. Supp 352 (7th Circuit 1974)

16. Supra

17. Supra

18. Glaser v. Marietta 351 F. Supp 555 (W.D. Penn 1972)

19. Gonyaw v. Gray 361 F. Supp 366 (Ver. 1973)

20. Ingraham v. Wright 492 F.2d 24[illegible] (5th Circuit 1974)

21. Meyer v. Nebraska 262 U.S. 309 (1923)

22. Pierce v. Society of Sisters 268 U.S. 510 (1925)

23. Wisconsin v. Yoder 406 U.S. 205 (1972)

24. Supra

25. Supra

26. Mahanes v. Hall No. CA-304-73-R (E.D. Va May 16, 1974)

27. Supra

28. Griswold v. Connecticut 381 U.S. 479 (1965)

29. Schonerber v. California 384 U.S. 757 (1966)

30. Terry v. Ohio 392 U.S. 1 (1968)

31. Supra

32. Supra

33. Supra

34. Goss v. Lopez 43 U.S.L.W4181 (U.S. January 22, 1975)

35. Supra